SUPREME COURT, U. S.

74-784

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. A-392

HOWARD G. REAMER,

Petitioner,

v.

GEORGE BEALL, ET AL.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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The Daily Record Co., Baltimore, Md. 21202

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No. A-392

HOWARD G. REAMER,

Petitioner,

v.

GEORGE BEALL, ET AL.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Howard G. Reamer, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on November 8, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit, as yet unreported, appears at Appendix A, infra, pages 1a-2a. The opinion of the District Court for the District of Maryland, is unreported and appears as Appendix B, infra, pages 2a-3a.

JURISDICTION

The judgment of the Court of Appeals (page 1a, infra) was entered on November 8, 1974. On November 18, 1974, Chief Justice Warren E. Burger granted a stay of the judg-

ment of the Court of Appeals wherein Howard G. Reamer was found to be in contempt of Court and ordered incarcerated by November 20, 1974. On November 25, 1974, the Supreme Court granted a further stay of the judgment of the Court of Appeals pending the filing of a Petition for a Writ of Certiorari by December 24, 1974. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1) and 28 U.S.C. Sec. 2106.

QUESTION PRESENTED

Are the protections afforded by the Fifth Amendment of the Constitution of the United States against self-incrimination available to the sole director, shareholder and professional employee of a professional association so as to prohibit disclosure to a grand jury of the books and records of the professional association which have been in the exclusive and continuous possession of the professional?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V:

> "No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law . . ."

STATEMENT OF THE CASE

On September 12, 1974, the Government issued a subpoena duces tecum to Howard G. Reamer, Esquire directing him to produce

> "all records of every kind and description pertaining to all checking accounts of Howard G. Reamer, Chartered . . . for the past five years and further, all case files of every kind and description . . . in which Howard G. Reamer, Chartered was in any way concerned during the past five years"

The subpoena duces tecum appears as Appendix C, infra, pages 3a-4a.

Howard G. Reamer, Chartered is a professional association created on April 6, 1972 by Howard G. Reamer to assume Howard G. Reamer's (Reamer) private practice of law. Reamer is the sole director and shareholder of the professional association, has exclusive possession of its books and records and, unilaterally makes all of its business decisions. The only attorney employed by Howard G. Reamer, Chartered is Reamer. The only other employee of Howard G. Reamer, Chartered is one secretary. The only individual having any interest of any nature in Howard G. Reamer. Chartered is Reamer. The mode of operation of Howard G. Reamer, Chartered is exactly as existed prior to April 6, 1972. The assets of Reamer as a sole practitioner, including all of his case files, were assigned to Howard G. Reamer, Chartered.

Reamer filed a Complaint in the nature of a Motion to Quash the Subpoena Duces Tecum supported by Affidavit asserting a Fifth Amendment privilege against self-incrimination though the records subpoenaed were those of a professional association incorporated under the laws of the State of Maryland. The Complaint appears as Appendix D, infra, pages 4a-6a. The Affidavit in support of the Complaint appears as Appendix E, infra, pages 6a-9a.

The Government admitted as true all facts alleged in the Complaint or asserted in Reamer's Affidavit.

In determining whether or not the "custodian" of records of a one man professional association can assert a Fifth Amendment privilege against self-incrimination, the District Court, on October 23, 1974, ruled that there was no distinction between a professional association created pursuant to Article 23, Sections 430-444 of the Annotated Code of Maryland and a business corporation created pursuant to Article

23, Sections 1-138 of the Annotated Code of Maryland. The opinion of the District Court appears as Appendix B, infra, pages 2a-3a.

However, the Government issued a new subpoena duces tecum more limited in scope but directing Reamer to produce various checks and related data of Howard G. Reamer, Chartered before the Grand Jury on October 30, 1974. Again, asserting a Fifth Amendment privilege against self-incrimination, Reamer refused. This subpoena duces tecum appears as Appendix G, infra, page 10a.

The Government subsequently filed a motion directing Reamer to show cause why he should not be held in contempt. A hearing was held before the District Court on November 1, 1974. It was conceded that Reamer was then in contempt of Court. The sole issue related to whether Reamer should be released upon his own recognizance or upon reasonable bail pending appeal of the denial of his right to assert a Fifth Amendment privilege.

The District Court held that the constitutional issue raised by Reamer was, in its opinion, insubstantial. Rather than immediately incarcerate Reamer pursuant to 28 U.S.C. Sec. 1826 for the duration of the Grand Jury investigation, the Court offered Reamer the opportunity to apply to the Court of Appeals for the Fourth Circuit for release upon his own recognizance or upon reasonable bail pending appeal on the merits. This opinion of the Court is found as Appendix F, infra, pages 9a-10a.

On November 8, 1974, the United States Court of Appeals for the Fourth Circuit denied Reamer's Application for a Stay but granted seven (7) days to seek relief from the Circuit Justice. The Fourth Circuit stated:

> "... Even though, under Maryland law, professional corporations do not possess all of the attributes of ordinary

> business corporations, and stockholders and professional employees of professional corporations do not enjoy the same limitations of civil liability as do their counterparts of ordinary business corporations, the force of the statement in *Bellis*, U.S. at , that 'no privilege can be claimed by the custodian of corporate records, regardless of how small the corporation may be,' is not diluted...."

[1]The opinion appears as Appendix A, infra, pages 1a-2a.

On November 18, 1974, Chief Justice Warren E. Burger granted Reamer's Application for a Stay pending submission of the Application to the entire Court. The Order granting the Stay is found as Appendix H, infra, page 11a.

On November 25, 1974, the Supreme Court continued the Stay granted on November 18, 1974 conditioned upon the filing of a Petition for a Writ of Certiorari on or before December 24, 1974. If the Petition for a Writ of Certiorari is granted, the Stay is to remain in effect pending the sending down of the judgment of the Court. The Order granting a continuance of the Stay is found as Appendix I, infra, page 12a.

REASONS FOR GRANTING THE WRIT

Professional Associations in General

As a result of overwhelming social pressure to reform the tax laws to encourage "professionals" to provide for their own retirement at a time they are in a position to do so, the Internal Revenue Service finally adopted Regulation Sec. 301.7701-2 recognizing the professional association. As indicated in CCH, Sec. 5943, the term "association" is not used in a narrow or technical sense but:

> ". . . refers to an organization whose characteristics require it to be classified for *purposes of taxation* as a corporation rather than as another type of organization ..." (emphasis supplied).

The more significant benefits available upon formation of a professional association are:

(1) Pension, profit sharing and stock bonus plans having tax deferred retirement benefits.

(2) Tax free medical reimbursements under a group medical or hospitalization plan are available.

(3) Up to $5,000.00 of tax free death benefits are available.

(4) $100.00 per week sick pay exclusion is available.

To obtain these individually and socially advantageous ends, it is necessary for one to adopt some corporate characteristics to qualify under the Internal Revenue Service regulations. It is clear that the Internal Revenue Service's recognition of professional associations for the limited purpose indicated did nothing more than give to "professionals" rights and benefits enjoyed by so many other individuals.

Though authorization for the creation and operation of a professional association stems from IRS Regulation 301-7701-2, legislative efforts in the past defining what constitutes a "corporation" are relevant. In summary, a resemblance test is generally applied. An unincorporated business group was treated as a corporation for tax purposes if it sufficiently resembled a corporation by possessing enough of the usual corporate attributes — continuity of life, limited liability, centralized management and free transferability of interest.

In *Morrissey v. U. S.*, 296 U.S. 344 (1935), the Court concluded that the trust there involved was taxable as an association i.e., a corporation. The Court, in describing its concept of such an association, developed the criteria for such a classification, setting forth a general test of resemblance as follows:

> "The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity. The resemblance points to features distinguishing associations from partnerships as well as from ordinary trusts." Ibid, page 357.

The Court specified five tests that would be decisive for the determination of corporate character similar to those indicated above. They were title (overlaps with continuity of existence), centralized management, continuity of existence, free transferability of interest and limited liability.

The instant case involves the opposite considerations as existed in *Morrissey* in that it is maintained that the professional association lacks the requisite characteristics of a corporation for it to be considered as a corporation for anything other than tax purposes.

Under the instant facts and the Maryland Professional Association Statute, Reamer lacks the power to freely select his own successor for two reasons. First, because of the statutory restrictions as to who may be a shareholder in his professional association and secondly, because his death terminates the professional association. Therefore, there is neither centralized management in the sense utilized in *Morrissey* or continuity of existence. Further, Reamer is totally prohibited from freely transferring his interest in the professional association. Finally, Reamer remains personally liable for the obligations of his professional association to the extent that the association is unable to meet its obligations or liabilities.

A long line of cases followed *Morrissey v. U. S., supra,* supporting by similar analogy the Petitioner's position that the professional association is so lacking in characteristics of the normal business corporate entity, that it cannot be char-

acterized as a corporation for any purpose other than tax considerations.

If one forming a professional association pursuant to Article 23, Section 430-444 of the Annotated Code of Maryland had all the rights, privileges and protections afforded officers, directors, and shareholders of a corporation created pursuant to Article 23, Sections 1-138 of the Annotated Code of Maryland, the Government's position would be more tenable. However, the differences between a professional association and any other corporation are innumerable and fundamental. A full analysis of all of the distinctions would require more space than is here justified. However, some of the more significant limitations of a professional association follow:

Sec. 433 — professional association can be created only by professionals . . .

Sec. 435 — the corporation does not protect the individual professional from personal liability.

Sec. 436 — a professional association cannot engage in any business other than the rendering of the specific professional services for which it was created.

Sec. 437 — stock cannot issue to anyone who is not licensed to render the specific professional services for which the professional association was created; voting trust agreements are prohibited.

Sec. 438 — if any shareholder in a professional association is elected to public office or otherwise stops rendering services to the professional association, he must sever his employment and financial interests.

Sec. 439 — no shareholder in a professional association can sell or transfer his shares except to the professional associations or to another who

is licensed to render professional services for which the professional association was created.

Sec. 441 — statutory provisions are provided for the disposition of stock in the event of a shareholders death.

Sec. 443 — a professional association can consolidate or merge only with another domestic professional association which renders the same specific professional services.

The decision of the District Court as affirmed by the Court of Appeals will affect large segments of the populace. Depending upon the particular State being considered, professional associations are available to certified public accountants, accountants, chiropractors, dentists, attorneys, physicians, surgeons, optometrists, opticians, physical therapists, psychologists, marriage counselors, clinical social workers, veterinarians, architects, engineers, naturopaths, land surveyors, osteopaths, pharmacists, podiatrists, registered nurses, and nurses.

A decision denying to this substantial body of individuals (and the list is constantly expanding) their individual constitutional protections in exchange for implementing these individually and socially desirable programs will substantially reduce the number of persons who will avail themselves of these opportunities. Equally significant, those persons who have already created professional associations did so without any expectation that by so doing they gave up individual constitutional protections.

Further, the denial of the Fifth Amendment privileges to this substantial body of individuals establishes a precedent for the denial of other equally fundamental constitutional protections as the price exacted for initiating these socially desirable programs.

Fifth Amendment Considerations

It is well settled that the custodian of corporate records, regardless of how small the corporation may be, cannot assert a privilege against self-incrimination. *Bellis v. U. S.*, 42 U.S.L.W. 4788 (U.S. May 28, 1974).

However, neither *Bellis* nor the many cases that preceded *Bellis*, dealt with an analogous situation. Here, the sole shareholder, officer, director and professional employee of a professional association maintains that because of the vast and fundamental differences between a professional association and a "normal" corporate entity that the general constitutional case law developed dealing with corporations cannot rotely be applied to professional associations. The question is one of first impression.

The lynchpin of the Government's position is that a professional association and a corporation are identical for all purposes; that because they are identical, the law applicable to corporations in general, is, without exception, also applicable to professional associations. It is submitted that this position is too rigid and inflexible and would thwart the intended liberal interpretation the Courts have consistently favored in dealing with personal liberties. Further, the Internal Revenue Service has clearly held that a professional association is a corporation for *tax purposes only*.

It would be inherently inequitable to hold that one gives up basic constitutional rights as the price for creating an entity that is so lacking in what historically have been the advantages of a corporation. By exacting the Professional Association Act, the Maryland legislature has attempted to cure a long standing inequity which prohibited professionals from providing for their retirement. A penalty must not be enacted for implementing such plans. As more and more

individuals enact such programs, the long range benefits to the future elderly, widows and children are undeniable.

The Fourth Circuit decision of *U. S. v. Hopps*, 331 F.2d 330, 340 (4th Cir. 1964) gives sustenance to Reamer's position. Though uttered in the context of the Court's discussion of *Hopps'* Fourth Amendment argument dealing with unreasonable search and seizure, there is no valid reason why the reasoning should not be equally applicable to Reamer's Fifth Amendment contention under the unique facts presented. The Court stated:

> ". . . rigid adherence to the concept that a corporation is an entity distinct from its officers and stockholders may not always be an appropriate basis for determination of constitutional rights. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 40 S. Ct. 182, 64 L. ed. 319 (1920) suggest that under facts and circumstances — not present in this case — an individual may be aggrieved by the illegal search and seizure of corporate records . . ."

In defining the parameters for the application of the Fifth Amendment privilege, though dealing with a partnership, *In Re Grand Jury Subpoena Duces Tecum*, 358 F. Supp. 661, 668 (Md. 1973) held:

> ". . . with respect to . . . records . . . of an *organization*, the personal constitutional privilege of a member may be asserted only when the identity of the *association* and its member are coincident . . ." (emphasis supplied).

If the Court in *In Re Grand Jury Subpoena Duces Tecum, supra*, believed that the application of the privilege is to be confined to justifiable situations only involving partnerships it is suggested the Court would not have used the word "organization" and "association" in the manner it did. The Court held that the test simply is whether the entity involved had an identity distinct from its members and whether the

documents sought were held in a truly representative capacity. This is the test that should be applied in the instant case and was applied in *Bellis v. U. S., supra.*

It is not contended that the creation of a professional association automatically confers special privileges upon its member or members with regard to Fifth Amendment protections. All that is maintained is that a member of a professional association should be subject to the same criteria as is applicable to either a proprietorship or a partnership. Thus, in each case the Court should ascertain whether or not the records sought by the Government are held in a realistic custodian type capacity and whether or not the interests of the individual in possession of the records and the organization are coincident. If the integrity of the records has been well maintained, and others do not have a right of access and the interests of the "custodian" and the "organization" are one and the same, the privilege should not be lost simply by the creation of a corporation for tax purposes only. The converse is also true. If there is a multi-membered professional association, the standards of *Bellis* should nevertheless be applied.

The professional association should not be treated any differently than a partnership which elects subchapter S status. See Secs. 1371-1377 of the IRS Code.

The stated objective of these sections is to allow

> "businesses to select the form of business organization desired, without the necessity of taking into account major differences in tax consequence." S. Rept. No. 1983, 85th Cong., 2d Sess., p. 68.

Under such circumstances, though legally a partnership, the partnership is treated as a corporation for tax purposes only. Partners in such an entity do not lose their individual constitutional protections by availing themselves of the opportunity, for tax purposes only, to be treated as a corpora-

tion. An adverse decision in the instant case may very well affect the constitutional protections of those who have elected subchapter S status.

Because professional associations are a relatively new form of doing business, the Supreme Court has not had the opportunity to specifically consider what effect, if any, the vast differences between a professional association and other corporations may have for purposes of questions of constitutional magnitude.

The language of *U. S. v. Cogan*, 257 F. Supp. 170 (1964) creates the atmosphere within which such a determination is to be made.

> ". . . It is to be borne in mind that the subject is a cherished privilege which must not be interpreted in a hostile or niggardly spirit. *Ullman v. U. S.*, 350 U.S. 422, 76 S. Ct. 497, 100 L. ed. 511 (1956), and the dimensions of which have tended lately to widen rather than to contract. *Malloy v. Hogan*, 378 U.S. 1; *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964) . . ."

In view of the first impression posture of the issue presented, the adverse affect that an affirmance of the Appeal Court's decision would have upon those who operate as professional associations and those who will consider doing so in the future and, most significantly, the precedent which could lead to the denial of other constitutional protections to this group of persons, the Court should grant this Writ for a Petition for Certiorari.

CONCLUSION

For all of the aforegoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

DAVID FREISHTAT,
HAROLD BUCHMAN,
Attorneys for Petitioner,
1700 Tower Building,
Baltimore, Maryland 21202.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 74-2232

Howard G. Reamer,

Appellant,

v.

George Beall, United States Attorney, and James M. Kramon, Assistant United States Attorney,

Appellees.

Appeal from the United States District Court
for the District of Maryland
(R. Dorsey Watkins, Senior District Judge)

Submitted November 6, 1974 Decided November 8, 1974

Before BRYAN, Senior Circuit Judge, WINTER and BUTZNER, Circuit Judges.

PER CURIAM:

Howard G. Reamer, the sole stockholder and sole professional employee of Howard G. Reamer, Chartered, a Maryland professional corporation, seeks review and reversal of the district court's finding that he is in contempt of court for failure to obey a grand jury subpoena for the production of certain records of Howard G. Reamer, Chartered, and the district court's order that he be incarcerated until the contempt has been purged. The matter was first presented by an application for a stay of the district court's order pending appeal; but, by agreement of the parties, the matter has been submitted for decision on the merits on the original papers without oral argument.

The sole point before us is that, because he is the sole stockholder and sole professional employee of the corporation, Reamer as the custodian of the corporation's records,

may invoke his personal fifth amendment right against self-incrimination to justify their nonproduction. On the authority of Bellis v. United States, ... U.S. ..... (May 28, 1974), the district court, in an oral opinion, ruled to the contrary and, we think, correctly so. Even though, under Maryland law, professional corporations do not possess all of the attributes of ordinary business corporations, and stockholders and professional employees of professional corporations do not enjoy the same limitations of civil liability as do their counterparts of ordinary business corporations, the force of the statement in *Bellis*, ... U.S. at ....., that "no privilege can be claimed by the custodian of corporate records, regardless of how small the corporation may be," is not diluted. We affirm on the oral opinion of the district court.

The mandate shall issue forthwith; but its effect shall be stayed until 8:30 a.m. on November 20, 1974, so as to afford Reamer the opportunity to seek a further stay and/or bail from the Supreme Court of the United States, or a Circuit Justice, pending the filing of an application for a writ of certiorari.

Affirmed.

APPENDIX B

United States District Court for the
District of Maryland

No. W 74-1054

Howard G. Reamer,

v.

George Beall, et al.

ORDER

The Court having before it plaintiff's Complaint in Nature of a Motion to Quash Subpoena Duces Tecum, and the Court having received memoranda from the parties, and the Court having had a hearing on such Motion on October 23, 1974,

and arguments of counsel having been presented at such hearing;

In accordance with the oral opinion of this Court rendered on October 23, 1974, it is this 25th day of October, 1974,

ORDERED that plaintiff's Motion to Quash Subpoena Duces Tecum be and hereby is denied insofar as said Motion is predicated upon plaintiff's allegations that enforcement of said subpoena would violate his right not to incriminate himself or the right of Howard G. Reamer, Chartered, not to incriminate itself.

The Court, having been advised by counsel for defendants that receipt of the items, the production of which is sought by the grand jury subpoena duces tecum, a copy of which is appended hereto, may obviate the necessity for resolving the further contentions of plaintiff respecting the attorney-client privilege and alleged Fourth Amendment rights of plaintiff, does not hereby make any ruling with respect to such further contentions.

R. DORSEY WATKINS,
Judge, U. S. District Court.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

To Howard G. Reamer, Esquire,
223-225 Equitable Building,
Baltimore, Maryland 21202.
Deliver by agreement to
David Freishtat, Esquire,
1700 Tower Building,
Baltimore, Maryland 21202.

You are hereby commanded to appear in the United States District Court for the District of Maryland at Room 450, U. S. Courthouse Building, 111 N. Calvert Street in the city of Baltimore on the 18th day of September, 1974 at 10 o'clock

A.M. to testify before the Grand Jury and bring with you all records of every kind and description pertaining to all checking accounts of Howard G. Reamer, Chartered, including, but not limited to, original checks, check stubs, deposit slips, bank statements, accounts receivable ledgers and accounts payable ledgers for the past five years, and, further, all case files of every kind and description and all documents connected therewith concerning claims against insured persons and insurance companies in which Howard G. Reamer, Chartered, was in any way concerned during the past five years.

This subpoena is issued on application of the United States.

PAUL R. SCHLITZ,
Clerk.

By MADELINE B. ZELINSKI,
Deputy Clerk.

James M. Kramon, Esquire,
Assistant U.S. Attorney, 4127 U.S. Courthouse,
111 N. Calvert Street, Baltimore, Maryland (539-2940)

Date: September 12, 1974.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. ....

Howard G. Reamer, 223-225 Equitable Building,
Baltimore, Maryland 21202,

v.

George Beall, United States Attorney,
405 U. S. Court House, Baltimore, Maryland 21202,
and
James M. Kramon, Assistant United States Attorney,
405 U. S. Court House, Baltimore, Maryland 21202

COMPLAINT

Howard G. Reamer, by David Freishtat, his attorney, brings this action against George Beall, United States Attorney and James M. Kramon, Assistant United States Attorney, and states:

1. On September 12, 1974, the Government issued a Subpoena Duces Tecum directed to Howard G. Reamer, Esquire seeking to obtain "all records of every kind and description pertaining to all checking accounts of Howard G. Reamer, Chartered . . . for the past five years and further, all case files of every kind and description . . . in which Howard G. Reamer, Chartered was in any way concerned during the past five years". A copy of the Subpoena Duces Tecum is attached hereto as Exhibit A.

2. Howard G. Reamer, Chartered is a professional association created on April 6, 1972 by Howard G. Reamer to assume Howard G. Reamer's private practice of law. Howard G. Reamer is the sole director and shareholder of the professional association. He alone has exclusive possession of the professional association's books and records and makes all of its business decisions. The only attorney employed by Howard G. Reamer, Chartered is Howard G. Reamer. The only other employee of Howard G. Reamer, Chartered is one secretary. The only individual having any interest of any nature in Howard G. Reamer, Chartered is Howard G. Reamer.

3. The mode of operation of Howard G. Reamer, Chartered is exactly the same as existed prior to April 6, 1972. The assets of Howard G. Reamer as a sole practitioner, including all of his case files, were assigned to Howard G. Reamer, Chartered.

4. The material sought by the Government contains work product of Howard G. Reamer, correspondence to and from doctors who treated or examined clients, the medical reports from such doctors indicating the nature and extent of the injuries sustained to clients, bills from various doctors indicating the number and dates of visits made by the various clients to the doctor for treatment, data indicating the

amount of payment to the doctors which, in some instances, may have been less than the full amount of the bill, together with other data which, if disclosed, may intend to incriminate Howard G. Reamer in violation of the Fifth Amendment of the United States Constitution.

5. The Subpoena Duces Tecum is burdensome and broad to such an extent as constitutes an unreasonable search and seizure in violation of the Fourth Amendment of the United States Constitution.

WHEREFORE, Howard G. Reamer seeks the following relief:

1. That the Subpoena Duces Tecum issued by the Government to Howard G. Reamer on September 12, 1974, attached hereto as Exhibit A, be quashed.

2. And for such other and further relief as the nature of the Plaintiff's cause may require.

DAVID FREISHTAT,
Attorney for Howard G. Reamer.

SHOW CAUSE ORDER

It is this ..... day of ....., 1974

ORDERED, that George Beall, United States Attorney and James M. Kramon, Assistant United States Attorney, show cause on or before the ..... day of ....., 1974 why the case of Howard G. Reamer v. George Beall and James Kramon should not be sealed provided a copy of the attached Complaint is served upon them on or before the ..... day of ....., 1974.

/s/ .....,
Judge.

CASE IMMEDIATELY SEALED

APPENDIX E

AFFIDAVIT OF HOWARD G. REAMER

State of Maryland, City of Baltimore, to wit:

I HEREBY CERTIFY that on the ..... day of ..... 1974, before me, the subscriber, a Notary Public for the State of Maryland, in and for the City aforesaid, personally ap-

peared HOWARD G. REAMER, who made oath in due form of of law as follows:

He is competent to be a witness and has personal knowledge of the facts herein stated.

I am a graduate of the University of Maryland Law School and have been a member of the Bar since June, 1959. Since my admission to the Bar, my offices have been maintained at 223 Equitable Building where I share office space with several other attorneys. Prior to April 6, 1972, I have been a sole practitioner specializing in tort law employing just one secretary. In approximately February of 1972, upon the advice of my accountant, consideration was given to forming a professional association through which I would continue my practice of law. An attorney was engaged and subsequently, on April 6, 1972, Articles of Incorporation were filed on my behalf wherein my practice thereafter was to operate through a professional association known as Howard G. Reamer, Chartered. I am the sole director, shareholder and party in interest in Howard G. Reamer, Chartered. The professional association employs one secretary. There are no other attorneys employed by Howard G. Reamer, Chartered other than myself. The offices of the professional association are maintained at the same offices utilized by me as a sole practitioner. All of the files maintained by me as a sole practitioner were assigned to the professional association in exchange for my stock. My duties subsequent to the incorporation of Howard G. Reamer, Chartered were exactly the same as my duties prior to its incorporation. All of the professional association's books, records, checks and files are exclusively in my possession and subject to my total control. No other person, except at my discretion, has access to any of the books, records and files of the professional association. No other person has had access to those books and records other than my accountant. The books, records and checking accounts maintained prior to April 6, 1972 were identical to those maintained subsequent to incorporation except the word "Chartered" was added following my name.

My sole motive for forming the professional association through which to operate my law practice was to take ad-

vantage of the tax benefits available to such associations. As a result of its formation, a pension plan was created wherein the professional association contributes a certain amount of money each year toward my retirement. These contributions are deductible to the professional association and are not taxable to me until retirement. My wife and myself are the only trustees under the pension plan.

The records subpoenaed by the Government contain my work product, correspondence to and from various doctors that treated my clients, medical reports from various doctors indicating the nature and extent of injuries sustained by the clients, the names and addresses of the clients, bills from various doctors indicating the dates and the number of visits made by the clients, data establishing the amount of payment to the various doctors in some instances may have been less than full payment of their bills and data indicating the disbursements finally made to the clients.

While I have no personal knowledge as to the nature of the investigation being conducted by the Government, based upon newspaper reports and the two criminal informations already brought by the Government against two attorneys, it is my belief that the Government is attempting to establish that various doctor reports and bills submitted were knowingly inflated in that the clients did not see the doctor the number of times indicated on the doctor's report. Further, it is my belief, that the Government hopes to establish that I knew of the alleged practice of inflating doctor bills for purposes of obtaining higher settlements from insurance companies.

The disclosure of the records of Howard G. Reamer, Chartered which in reality are my personal records may tend to incriminate me in violation of the Fifth Amendment of the United States Constitution.

Further, the Subpoena Duces Tecum seeks every file in my office since the inception of Howard G. Reamer, Chartered including open and closed files. Compliance with such an all inclusive, overly broad subpoena would be oppressive in that I would be forced to shut down my practice of law. Cases could not be settled, suits could not be filed and clients'

interests would otherwise go unprotected if compliance with the subpoena were ordered.

/s/ .....,
Notary Public.

HOWARD G. REAMER

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. W-74-1054

Howard G. Reamer,

v.

George Beall, United States Attorney,
and
James M. Kramon, Assistant United States Attorney.

ORDER OF COURT

This cause having come on for hearing on motion of United States to require plaintiff to show cause why he should not be held in contempt for failure to respond to a grand jury subpoena duces tecum and, failing to do so, to commit plaintiff to confinement without bail; and after hearing counsel for the parties, the Court, pursuant to its Oral Opinion, found Howard G. Reamer in Contempt of Court;

AND, It Is Ordered, by the United States District Court for the District of Maryland, this 1st day of November 1974 that the confinement of the said Howard G. Reamer is suspended until November 12, 1974 to permit petitioner to seek an order granting bail from the Fourth Circuit, or a Judge thereof, or from the Supreme Court, or a Justice Thereof. If such order granting bail is not obtained, the petitioner shall report to the United States Marshal for the District of Maryland at 8:30 AM, on November 13, 1974 to be confined for the life of the Court Proceeding or the term

of the Grand Jury, including extensions, before which such refusal to comply with the Court Order occurred, but not to exceed eighteen (18) months.

R. DORSEY WATKINS,
United States District Court Judge.

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

To Howard G. Reamer, Esquire
223-225 Equitable Building
Baltimore, Maryland 21202
Deliver by agreement to
David Freishtat, Esquire
1700 Tower Building,
Baltimore, Maryland 21202

You are hereby commanded to appear in the United States District Court for the District of Maryland at 111 N. Calvert Street in the city of Baltimore on the 30th day of October, 1974 at 10:00 o'clock A.M. to testify before the Grand Jury and bring with you all records of every kind and description pertaining to all checking accounts of Howard G. Reamer, Chartered, including, but not limited to, original checks, check stubs, deposit slips, bank statements, accounts receivable ledgers and accounts payable ledgers for the past five years.

This subpoena is issued on application of the United States.

PAUL R. SCHLITZ,
Clerk.

By MADELINE B. ZILINSKI,
Deputy Clerk.

James M. Kramon, Asst. U.S. Attorney,
415 U.S. Courthouse Building,
Baltimore, Maryland 21202 (539-2940)
Date October 23, 1974

APPENDIX H

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D.C. 20543

November 18, 1974

David Freishtat, Esq.
Suite 1700 Tower Building
222 E. Baltimore Street
Baltimore, Maryland 21202

Re: Howard G. Reamer v. George Beall, United States Attorney, et al., A-392

Dear Sir:

The Court today entered the following order in the above-entitled case:

"The application for stay of the judgment of the United States District Court for the District of Maryland presented to the Chief Justice and by him referred to the Court is granted pending further order of the Court."

Very truly yours,

MICHAEL RODAK, JR.,
Clerk.

By HELEN TAYLOR,
Assistant Clerk.

Honorable Robert H. Bork
Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

Clerk, U.S. District Court for D. Maryland (No. Civ. 74-1054-W)
Clerk, U.S. Court of Appeals for 4th Cir. (No. 74-2232)

APPENDIX I

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D.C. 20543

November 25, 1974

David Freishtat, Esq.
Suite 1700 Tower Building
222 E. Baltimore Street
Baltimore, Maryland 21202

Re: Howard G. Reamer v. George Beall, United States Attorney, et al., No. A-392

Dear Mr. Freishtat:

The Court today entered the following order in the above-entitled case:

"The order entered by the Court on November 18, 1974, staying the judgment of the United States District Court for the District of Maryland is continued conditioned upon the filing of a petition for writ of certiorari on or before December 24, 1974. Should such a petition be so filed on or before December 24, 1974, this order is to continue pending this Court's action on the petition. If the petition for writ of certiorari is denied, this order is to terminate automatically. In the event the petition for writ of certiorari is granted, this order is to remain in effect pending the sending down of the judgment of this Court."

Very truly yours,

MICHAEL RODAK, JR.,
Clerk.

By FRANCIS J. LORSON,
Assistant Clerk.

dm

cc: The Solicitor General of the United States
Clerk, United States District Court (Your No. Civ. 74-1054-W) for the District of Maryland
Clerk, United States Court of Appeals (Your No. 74-2232) for the Fourth Circuit

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-784

HOWARD G. REAMER, PETITIONER

v.

GEORGE BEALL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

On November 1, 1974, petitioner was found in civil contempt by the United States District Court for the District of Maryland for failure to comply with a grand jury subpoena *duces tecum* requiring production of all relevant records of a professional corporation of which he is the sole shareholder and director. The district court ordered petitioner to be incarcerated pursuant to 28 U.S.C. 1826 (Pet. App. F). The court of appeals affirmed (Pet. App. A).[1] Petitioner contends here that his Fifth Amendment privilege against self-incrimination justified his noncompliance with the grand jury subpoena.

On September 12, 1974, a federal grand jury issued a subpoena *duces tecum* to petitioner ordering him to appear before it and to produce "all records of every kind and des-

[1]The district court's order has been stayed pending consideration of the petition for a writ of certiorari.

cription pertaining to all checking accounts of Howard G. Reamer, Chartered, including but not limited to, original checks, check stubs, deposit slips, bank statements, accounts receivable ledgers and accounts payable ledgers for the past five years and, further, all case files of every kind and description and all documents connected therewith concerning claims against insured persons and insurance companies in which Howard G. Reamer, Chartered, was in any way concerned during the past five years" (Pet. App. C, pp. 3a-4a). On September 27, 1974, petitioner sought to quash the subpoena on the grounds that it violated both his Fifth Amendment right against compulsory self-incrimination and the attorney-client privilege. On October 23, 1974, the government agreed to withdraw that part of the subpoena requiring the production of materials arguably protected by an attorney-client privilege. The district court rejected petitioner's Fifth Amendment claim.

Thereafter, the grand jury issued a new subpoena *duces tecum* requiring petitioner to produce "all records of every kind and description pertaining to all checking accounts of Howard G. Reamer, Chartered, including, but not limited to, original checks, check stubs, deposit slips, bank statements, accounts receivable ledgers and accounts payable ledgers for the past five years" (Pet. App. G, p. 10a). Petitioner failed to comply with the subpoena. The government thereupon filed a motion on October 30, 1974, to show cause why petitioner should not be held in contempt. On November 1, 1974, the district court, relying on *Bellis* v. *United States*, 417 U.S. 85, held that the requested materials were not privileged under the Fifth Amendment and found petitioner in contempt. The court of appeals affirmed.

Petitioner's contention here—that the records of his professional corporation are privileged from production under the Fifth Amendment—is without merit. It has long been held that the privilege against self-incrimination does not extend to corporate records held in a representative capacity. See, *e.g.*, *Wilson* v. *United States*, 221 U.S. 361; *Dreier* v. *United States*, 221 U.S. 394; *Wheeler* v. *United States*, 226 U.S. 478. This rule applies without regard to the size of the corporation, and indeed has been applied by this Court to the records of a corporation having only a single stockholder. *Grant* v. *United States*, 227 U.S. 74, 76-77. As this Court observed in *Bellis* v. *United States*, *supra*, 417 U.S. at 100, "no privilege can be claimed by the custodian of corporate records, regardless of how small the corporation may be."

Petitioner attempts to distinguish *Bellis* and earlier decisions on the ground that a professional corporation "lacks the requisite characteristics of a corporation for it to be considered as a corporation for anything other than tax purposes" (Pet. 7). This contention is, however, beside the point. *Bellis* itself involved the records not of a corporation but of a small partnership. Moreover, many similar decisions of this Court have involved records of unincorporated associations. See, *e.g.*, *United States* v. *White*, 322 U.S. 694; *United States* v. *Fleischman*, 339 U.S. 349; *Rogers* v. *United States*, 340 U.S. 367.

Petitioner's professional corporation is a separate legal entity organized under and recognized by state law, and as such it is subject to state regulation. See Maryland Professional Service Corporation Act, Md. Annot. Code, Art. 23, §430, *et seq.* Accordingly, its "records do not contain the requisite element of privacy or confidentiality essential for the privilege to attach." *Bellis* v. *United States*,

supra, 417 U.S. at 92. This is true regardless of the fact that the corporation is owned by a single shareholder who organized it principally for his own federal income tax purposes; by choosing to do business in corporate form, petitioner relinquished his personal privacy interests in the records of the business. *Grant* v. *United States, supra; Wild* v. *Brewer,* 329 F.2d 924 (C.A. 9), certiorari denied, 379 U.S. 914; *Hair Industry, Ltd.* v. *United States,* 340 F.2d 510 (C.A. 2), certiorari denied, 381 U.S. 950.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.